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10/807,250	03/24/2004	Hidekazu Tachihara	500.43697X00	4504

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EXAMINER
POLLACK, MELVIN H

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☒ Other: *see attached office action*.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 17 November 2008 have been fully considered but they are

not persuasive. An analysis of the arguments is provided below.

2.   In regards to the 101 rejections, the examiner reviews whether the claims fit the statutory

category based on the definitions of one of ordinary skill in the art in light of Pp. 12-13 of the

specification. Since the specification is ambiguous in its definition of embodiments, the

examiner will use the default definitions.

3.   For claim 9, computer system and devices indicate hardware embodiments rather than

software per se. Therefore, the 101 rejection is withdrawn for this claim.

4.   Claim 10, by contrast, uses the term "computer-readable medium embodying a program."

This may still be considered as software per se or signals per se. Therefore, the rejection is

maintained. The applicant may overcome the rejection by changing the term to "storing," thus

placing the claim in a statutory category.

5.   Applicant argues that Natarajan does not expressly disclose generating and managing

correlation information (associating monitoring information with policy), generating monitoring

policy or generating monitoring structure information (Pp. 9-10). The applicant characterizes

Natarajan as managing and applying monitoring policies, updating monitoring policies, and

collecting information on each resource based on the policy for each resource.

6.   Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a

general allegation that the claims define a patentable invention without specifically pointing out

how the language of the claims patentably distinguishes them from the references.

7.   Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly

point out the patentable novelty which he or she thinks the claims present in view of the state of

the art disclosed by the references cited or the objections made. Further, they do not show how

the amendments avoid such references or objections.

8.   The examiner will attempt to respond to the allegations to the best of his ability. As

shown prior, the system collects information representing correlation between program and

system resource and uses it in accordance with policy (col. 8, lines 20-40). Such policies may be

generated and displayed (col. 10, line 20 – col. 11, line 35; col. 13, line 60 – col. 15, line 20).

9.   Therefore, the rejection is maintained for the reasons above. This rejection is final.

Claim Rejections - 35 USC § 101

10.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

11.   Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to

non-statutory subject matter. These claims are drawn to software-per-se and signals-per-se.

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13.   Claims 1, 2, 4-6, and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by

Natarajan et al. (6,505,244).

14.   For claims 1, 9, and 10, Natarajan teaches a performance management method and

system (abstract) for managing performance of a computer system having a performance

management computer for monitoring states of a program and a system resource of a business

computer (col. 1, line 1 – col. 4, line 50; col. 33, line 60 – col. 34, line 5), the performance

management method comprising:

   a.   displaying a menu for setting a policy and accepting an input from a user, and

   acquiring the policy by the performance management computer for conducting a process

   for acquiring the policy set by the user (col. 13, line 60 – col. 15, line 20);

   b.   setting and managing a basic structure which represents a basic monitoring

   structure for monitoring the program and the system resource, based on the acquired

   policy (col. 13, line 60 - col. 15, line 10);

   c.   collecting business information on a business configuration from a management

   product group used in the business computer (col. 27, lines 10-15) and generating and

   managing correlation information which represents correlation of the program and the

   system resource of the business computer, in accordance with the acquired policy (col. 7,

   line 10 – col. 10, line 55);

   d.   generating monitoring structure information (col. 21, line 15 – col. 22, line 30)

   which represents a structure for monitoring the program and the system resource by

merging the generated correlation information in accordance with the basic structure (col.

13, line 60 – col. 14, line 40); and

e.   displaying a monitoring structure based on the generated monitoring structure

information (col. 10, line 20 – col. 11, line 35).

15.   For claim 2, Natarajan teaches that the monitoring structure information is generated so

as to be different from user to user in accordance with a policy set by a user (col. 28, lines 60-

65).

16.   For claim 4, Natarajan teaches that a part or whole of the policy is set by using preset

contents (col. 14, lines 30-40).

17.   For claim 5, Natarajan teaches that the correlation information is generated by a business

information integration DB subjected to mirroring of business information using a storage

technique including a SAN (Storage Area Network) (col. 13, lines 10-30).

18.   For claim 6, Natarajan teaches that an alteration in the business information is detected

and the monitoring structure information is updated responsive to the detected alteration (col. 26,

lines 30-50).

19.   For claim 8, Natarajan teaches that the correlation information is generated by referring

to only the business information containing information of necessary programs or system

resources, on a basis of the policy (col. 20, lines 25-40).

Claim Rejections - 35 USC § 103

20.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Natarajan as applied to claims 1 and 2 above, and further in view of Naik et al. (7,366,989).

22.   For claim 3, Natarajan does not expressly disclose that contents of the menu for setting the policy are altered from user to user. Naik teaches a method and system (abstract) of network element management by policy (col. 1, line 1 – col. 6, line 15) that includes this limitation (col. 39, line 48 - col. 42, line 8). At the time the invention was made, one of ordinary skill in the art would have added Naik in order to reduce the complexity of the topology view (col. 3, lines 25-40).

23.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Natarajan as applied to claims 1-6 above, and further in view of Kemp et al. (2003/0140150).

24.   For claim 7, Natarajan does not expressly disclose that the monitoring structure information is updated on a basis of a difference between before and after the alteration in the business information. Kemp teaches a method and system (abstract) of system monitoring (Paras. 1-18) that includes this limitation (Paras. 35-44). At the time the invention was made, one of ordinary skill in the art would have added Kemp in order to lower the consumption of time and other costs (Paras. 8-9).

Conclusion

25.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MELVIN H. POLLACK whose telephone number is (571)272-

3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H. P./
Examiner, Art Unit 2445
30 January 2009

/Larry D Donaghue/
Primary Examiner, Art Unit 2454